25. The handling of plaintiffs' baggage at New Haven by Defendant's Red-Cap was an incident to Plaintiff Mrs. Nothnagle's interstate journey.

26. The rights and liabilities of the parties are governed by federal legislation as applied in federal courts; and particularly by the Interstate Commerce Act and the applicable tariffs on file with the Interstate Commerce Commission.

27. Defendant's tariff was binding regardless of lack of knowledge, actual or constructive, or assent thereto by Plaintiffs, or either of them.

28. Since no declaration of greater value was made in writing, Defendant's liability for loss of Plaintiff's baggage is limited to $25.00.

29. Judgment should enter for Plaintiff for $25.00 in accordance with Defendant's offer of judgment on file.

30. The claims of law made by the Defendant in paragraphs 25, 26, 27, 28, and 29 of the finding are overruled.

V

Any exhibit may be used in argument in the Supreme Court of Errors without being printed.

Jos. W. Bogdanski, Judge.

[Filed March 22, 1951.]

MOTION TO CORRECT FINDING.

Defendant respectfully moves the Court that it correct its Finding in the above-captioned case:

1. By adding to Part IV of the Finding the claims of law made by defendant as set forth in paragraphs 22 to 27, inclusive, of defendant's draft finding (incorporating paragraphs 15 to 20, inclusive, of the draft finding).

LIBRARY
SUPREME COURT, U.S.

TRANSCRIPT OF RECORD

Supreme Court of the United States

OCTOBER TERM, 1952

No. 525

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, PETITIONER,

vs.

MRS. GEORGE NOTHNAGLE, ET AL.

ON WRIT OF CERTIORARI TO THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

PETITION FOR CERTIORARI FILED DECEMBER 31, 1952
CERTIORARI GRANTED MARCH 9, 1953

2. By adding to the Finding a direction, pursuant to Section 346 of the Practice Book, that exhibits in the case may be used in argument in the Supreme Court without being printed.

The Defendant,
By RALPH W. PICKARD,
Its Attorney.

ORDER.

3/13/51.

The foregoing motion having come before the Court, and the Court having found the same ought to be granted.

The same is hereby granted.

By the Court,
JOSEPH F. NOONAN,
Clerk.

[See paragraphs 21 through 29 of Corrected and Amended Finding, page 9.]

[Filed March 7, 1951.]

ASSIGNMENT OF ERRORS.

The Court erred:

1. In finding the conclusions in paragraphs 16, 17, 18 and 19 of the finding when the facts admitted in the pleadings and set forth in the finding do not support them.

2. In overruling the claims of law made by defendant stated in paragraphs 24 to 29, inclusive, of the finding.

3. In rendering judgment upon the facts admitted in the pleadings and set forth in the finding because (a) plaintiff Mrs. Nothnagel was engaged on an interstate journey on October 5, 1949; (b) the handling of plaintiffs' baggage at New

Haven by defendant's redcap on that date was an incident to plaintiff Mrs. Nothnagel's interstate journey; (c) the rights and liabilities of the parties are governed by federal legislation as applied in federal courts, particularly the Interstate Commerce Act and applicable tariffs on file with the Interstate Commerce Commission; (d) defendant's tariff was binding irrespective of lack of knowledge, actual or constructive, or assent thereto by plaintiffs or either of them; (e) since no declaration of greater value was made in writing defendant's liability for loss of plaintiffs' baggage was limited to $25.00; (f) judgment should enter for plaintiffs for $25.00 only in accordance with defendant's offer of judgment on file.

Defendant,
By RALPH W. PICKARD,
Its Attorney.

[Filed March 22, 1951.]

MOTION TO AMEND FINDING.

The Plaintiff moves that the finding of said Court be amended by adding thereto the following: 1. The claims of law made by the Defendant in paragraphs 25, 26, 27, 28 and 29 of the finding are over-ruled.

Respectfully submitted,
Plaintiff,
By FRANCIS W. DANAHER,
Her Attorney.

[Granted, July 2, 1951, by BOGDANSKE Judge.]

[See paragraph 30 of Corrected and Amended Finding, page 10.]

[Filed March 31, 1951.]

JUL 11 1952

THE SUPREME COURT OF ERRORS OF THE STATE OF CONNECTICUT

NEW HAVEN COUNTY

APRIL TERM, 1951

3675

MRS. GEORGE NOTHNAGLE ET AL.
vs.
NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY.

City Court of Meriden,
New Haven County,
November 25, 1950.

APPEARANCES.

For the Plaintiffs:
FRANCIS R. DANAHER, Esq.

For the Defendant:
RALPH W. PICKARD, Esq.,
THOMAS J. O'SULLIVAN, Esq.

DEFENDANT'S APPEAL FROM THE CITY COURT OF MERIDEN.

Hon. JOSEPH W. BOGDANSKI, Judge.

SUPREME COURT OF ERRORS,
NEW HAVEN COUNTY, } Clerk's Office,
June 30, 1952.

The above and foregoing is a true copy of the record in said case to be used in the trial in the Supreme Court of Errors.

EDWARD HORWITZ, Clerk.

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EXHIBITS.

(Not Printed.)

Plaintiffs' exhibit:

A. New England Joint Tariff RC No. 3-N.

Defendant's exhibits:

1. Letter, October 13, 1949.
2. Letter, October 19, 1949.
3. Letter, October 31, 1949.
4. Letter, November 23, 1949.
5. Letter, December 15, 1949.

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[fol. 14] STATE OF CONNECTICUT, SUPREME COURT OF ERRORS, HARTFORD,

November 25, 1952

To the Clerk of the Supreme Court of Errors for New Haven County, The Supreme Court of Errors has decided the following case:

No. 3675

MRS. GEORGE NOTHNAGLE et al

vs.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY

There is no error.

Opinion by Baldwin, J.

(S.) Allyn L. Brown, Chief Justice.

[fol. 15] SUPREME COURT OF ERRORS, OCTOBER TERM, 1952

MRS. GEORGE NOTHNAGLE et al v. THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY.

Action to recover damages for the loss of baggage, alleged to have been caused by the negligence of the defendant, brought to the City Court of Meriden and tried to the court, Bogdanski, J.; judgment for the named plaintiff and appeal by the defendant. No error.

Thomas J. O'Sullivan, for the appellant (defendant).

Francis R. Danaher, for the appellee (named plaintiff).

BALDWIN, J.

The plaintiffs brought suit against the defendant, claiming damages because of its negligence in losing baggage belonging to them and entrusted to it by the named plaintiff. The defendant made an offer of judgment in the amount of $25 which the plaintiffs refused. The defendant thereupon filed an answer denying liability. In a special defense, it alleged further, in substance, that its liability as a carrier engaged in inter-state transportation was deter-

THE
SUPREME COURT OF ERRORS
OF THE
STATE OF CONNECTICUT

NEW HAVEN COUNTY

APRIL TERM, 1951

3675

MRS. GEORGE NOTHNAGLE ET AL.	City Court of Meriden, New Haven County, November 25, 1950.
vs.	
NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY.	

APPEARANCES.

For the Plaintiffs:
FRANCIS R. DANAHER, Esq.

For the Defendant:
RALPH W. PICKARD, Esq.,
THOMAS J. O'SULLIVAN, Esq.

DEFENDANT'S APPEAL FROM THE CITY COURT OF MERIDEN.

Hon. JOSEPH W. BOGDANSKI, Judge.

To the Sheriff of the County of New Haven, His Deputy, or Either Constable of the Town of New Haven Within Said County—Greeting:

By authority of the State of Connecticut you are hereby commanded to summon the New York, New Haven & Hartford Railroad Company, a corporation, to appear before the City Court of Meriden, to be holden at Meriden, in and for the County of New Haven on the fourth Tuesday of January, 1950, then and there to answer unto Mrs. George Nothnagle and George Nothnagle; both of said City of Meriden, said County and State, in a civil action wherein the Plaintiff complains and says:

1. On or about the 5th day of October, 1949, the Plaintiff, purchased a ticket for passage upon trains operated by the Defendant from Meriden to New Haven to Fall River, Massachusetts.

2. Said Defendant was a corporation engaged in interstate commerce and passenger transit for hire.

3. On said day, the Plaintiff boarded the train operated by the Defendant at Meriden, at 11:19 A. M. and arrived at New Haven with her baggage shortly after 11:30 A. M.

4. Said Plaintiff alighted from said train to the platform of the station owned, operated and maintained by the Defendant, and was approached by an employee of said Defendant (commonly called a 'Red Cap'), who solicited her baggage.

5. Said Plaintiff, relying upon said Defendant, its servants and agents, surrendered her baggage to said red-cap with orders to have said baggage returned to her at the train leaving for Fall River on Track #8 at 12:40 P. M.

6. Said red-cap did not return her baggage to her at that time or at any other time; and said baggage was lost to her, to her great damage.

7. Said baggage consisted of a suitcase containing a diamond ring, costume jewelry, two dresses, a suit, underclothing,

shoes and silver mounted brush and comb, all belonging to the Plaintiff Mrs. George Nothnagle; belonging to Mr. Nothnagle were ties, shirts, pajamas, socks; shorts and handkerchiefs.

8. Said baggage was lost through the negligence, carelessness and heedlessness of said Defendant, its servants and agents.

Plaintiff, Mrs. George Nothnagle claims $550 damages.

Plaintiff, Mr. George Nothnagle claims $100 damages.

Plaintiff of Meriden is recognized in $70 to prosecute.

I, Francis R. Danaher, the subscribing authority hereby certify that I have personal knowledge as to the financial responsibility of the Plaintiffs and deem it sufficient to pay costs in this action.

Of this writ, with your doings thereon make due service and return.

Dated at Meriden, this 28th day of December, 1949.

/s/ FRANCIS R. DANAHER,
Commissioner of the Superior Court
for New Haven County.

OFFER OF JUDGMENT.

Defendant hereby gives notice that it offers to permit plaintiffs to take judgment in the above-captioned action for Twenty-Five Dollars ($25.00), together with such interest and costs as may be allowed by law.

Defendant,
By /s/ RALPH W. PICKARD,
Its Attorney.

To: Francis R. Danaher, Esq.,
30 Colony Street,
Meriden, Connecticut.

[Filed Sept. 25, 1950.]

AMENDED ANSWER.

First Defense:

1. Paragraphs 1, 2, 3, 4, 5 and 6 of plaintiff's complaint are admitted.

2. Paragraphs 7 and 8 of plaintiff's complaint are denied.

Second Defense:

1. At all times referred to in plaintiffs' complaint, defendant had on file with the Interstate Commerce Commission and there was in effect a tariff known as "New England Joint Tariff RC No. 3-N" regulating the charges for and liability with respect to the handling of hand baggage and other personal effects of passengers by station porters ("Red Caps").

2. Paragraph 2 of said tariff limited defendant's liability for each piece of baggage or parcel (including its contents) to a maximum of Twenty-Five Dollars ($25.00) per bag or parcel unless a greater value was declared in writing by the passenger.

3. No greater value was declared by plaintiff with respect to the baggage referred to in the complaint and defendant's liability (if any) is limited to Twenty-Five Dollars ($25.00).

Defendant,
By /s/ RALPH W. PICKARD,
Its Attorney.

[Filed Sept. 26, 1950.]

MEMORANDUM OF DECISION.

This is an action based on negligence in the safe-keeping of a travelling bag placed in the custody of defendant's agent. The stipulation at the outset of the trial admitted damages of $515.00, and further admitted the allegations in the plaintiff's complaint. The plaintiff had alleged negligence in her complaint and there was evidence given by her in the trial to substantiate this allegation.

It appeared to the Court that the baggage was delivered to the defendant for safe-keeping only. That being the case, the case of *Allen vs. Southern Pacific Company*, Utah 213P, 2nd 667 is decisive in the present case. There the court indicated that "since the bag was left for safe-keeping and not for transportation, the case was distinguishable from cases involving baggage or other personal property in interstate commerce.

Wherefore, the court finds the issues for the plaintiff and renders judgment in the sum of $615.00 plus taxable costs.

BOGDANSKI, Judge.

[Filed Nov. 25, 1950.]

State of Connecticut.

MRS. GEORGE NOTHNAGLE and GEORGE NOTHNAGLE, both of the City of Meriden, County of New Haven, State of Connecticut

vs.

THE NEW YORK, NEW HAVEN & HARTFORD RAILROAD COMPANY, a corporation.

City Court of Meriden, County of New Haven, November 25th, 1950.

Present, HON. JOSEPH W. BOGDANSKI, Judge.

JUDGMENT.

This action, by writ and complaint, dated December 28th, 1949, in which the plaintiff, Mrs. George Nothnagle, claims $550.00 damages and the plaintiff, Mr. George Nothnagle, claims $100.00 damages, came to this Court on the first Tuesday of January, 1950, and thence to August 17th, 1950 when the defendant filed its answer, and thence to September 25th, 1950 when the defendant filed an offer to permit the plaintiffs to take judgment for $25.00, together with such interest and costs as may be allowed by law, and thence to September 26th,

1950 when the defendant filed an amended answer, and thence to the present time when the plaintiff, Mrs. George Nothnagle, and the defendant appeared and were at issue to the Court, as on file.

The Court, having heard the plaintiff, Mrs. George Nothnagle, and the defendant, finds the issues for the plaintiff, Mrs. George Nothnagle.

Whereupon it is adjudged that the plaintiff, Mrs. George Nothnagle, recover of the defendant Six Hundred Fifteen Dollars ($615.00) damages, and her costs taxed at

JOSEPH W. BOGDANSKI, Judge.

DEFENDANT'S APPEAL.

In the above-entitled case the Defendant appeals from the Judgment of said Court to the Supreme Court of Errors.

The Defendant,
By RALPH W. PICKARD,
Its Attorney.

I certify that the foregoing appeal was filed on the 13 day of January, 1951; that the Defendant has paid the record and entry fees of the Supreme Court of Errors; and that Thomas J. O'Sullivan of Orange is recognized in the sum of Eight Hundred and Fifty Dollars ($850.00) conditioned that said Defendant shall prosecute said appeal to effect and pay all costs therein if it shall fail to do so; and said appeal is hereby allowed.

GEO. J. KILROY, JR.,
Asst. Clerk.

[Filed Jan. 13, 1951.]

CORRECTED AND AMENDED FINDING.

[See Motion to Correct Finding, page 10 and Motion to Amend Finding, page 12.]

In the above case, which was tried to the Court upon the issues of the complaint, as on file, the following facts are found:

1. On the 5th day of October, 1949, the Plaintiff, Mrs. George Nothnagle, purchased a ticket for passage upon trains operated by the Defendant, from the City of Meriden to the City of New Haven, both within the State of Connecticut and to Fall River, Massachusetts.

2. The Defendant was a corporation engaged in interstate commerce and passenger transit for hire.

3. On October 5, 1949, Plaintiff, Mrs. Nothnagel, boarded the train operated by the Defendant at Meriden, Connecticut, at 11:19 A. M. and arrived at New Haven with her baggage shortly after 11:30 A. M.

4. At New Haven Plaintiff, Mrs. Nothangel, alighted from the train from Meriden to the platform of the station owned, operated and maintained by the Defendant, and was approached by an employee of the said Defendant (commonly called a "Red-Cap") who solicited her baggage.

5. Said Plaintiff, relying upon said Defendant, its servants and agents, surrendered her baggage to said Red-Cap with orders to have said baggage returned to her at the train leaving for Fall River on Track #8 at 12:40 P. M.

6. Said Red-Cap did not return her baggage to her at that time or at any other time; that said baggage was lost to her, to her great damage.

7. Said baggage consisted of a suit-case containing a diamond ring, costume jewelry, two dresses, a suit, underclothing, shoes and silver mounted brush and comb, all belong-

ing to the Plaintiff, Mrs. Nothnagel; belonging to Mr. Nothnagel were ties, shirts, pajamas, socks, shorts and handkerchiefs.

8. The baggage and its contents was reasonably worth Six Hundred and Fifteen (615.00) Dollars.

9. On October 5, 1949, the Defendant had on file with the Interstate Commerce Commission a tariff entitled "New England Joint Tariff R.C. No. 3-N" stating the charges for and liability with respect to the handling of hand baggage and other personal effects of passengers by station porters ("Red-Caps").

10. Paragraph 2 of said tariff stated that Defendant's liability for each piece of baggage or parcel (including its contents) would be limited to Twenty-five (25.00) Dollars unless a greater value was declared in writing by the passenger.

11. No greater value was declared in writing by Plaintiff, Mrs. Nothnagel, with respect to the baggage surrended to Defendant's Red-Cap at New Haven, Connecticut, on October 5, 1949.

12. There was no evidence offered that Plaintiffs or either of them paid or intended to pay anything of value for handling said baggage at New Haven on October 5, 1949.

13. Said Red-Cap gave the Plaintiff no ticket or any other evidence of a claim or claim check nor any other item with printing or any statement of limitation of liability upon it; and said Plaintiff had no knowledge of the tariff referred to in Paragraph 9.

14. There were no signs posted at any point calling the attention of the passenger to the fact that the Defendant attempted to limit its liability by the use of the tariff referred to.

15. Said baggage was lost through the negligence, carelessness and heedlessness of said Defendant, its servants and agents.

II

The following conclusions have been reached:

16. Said Defendant was a bailee of said baggage.

17. The baggage of the Plaintiff was left with the Defendant for safe-keeping and not for transportation and, therefore, was not in Interstate Commerce.

18. The rights and liabilities of the parties are covered by the law of the State of Connecticut concerning bailments.

19. Judgment was rendered for the Plaintiff to recover Six Hundred Fifteen (615.00) Dollars plus their costs.

III

The following rulings were made on the trial:

20. The Attorneys for the parties herein stipulated to the Court that all of the matters alleged in the Plaintiff's complaint are admitted and that the value of the contents of the baggage be set at Six Hundred Fifteen (615.00) Dollars; that Defendant's only defense would be the application of the tariff as filed with the Interstate Commerce Commission.

IV

The Plaintiff made the following claims of law:

21. That said baggage was not engaged in Interstate Commerce.

22. That the law applicable was the law of bailments.

23. That the Defendant could not limit its liability for negligence.

The Defendant made the following claims of law:

24. Plaintiff Mrs. Nothnagle was engaged on an interstate journey on October 5, 1949.

mined by a tariff schedule on file with the interstate commerce commission which established charges for, and liability with respect to, the handling of baggage. This tariff limited recovery for the loss of baggage to the sum of $25 unless a greater value was declared in writing by the passenger. On the trial, the parties entered into a stipulation admitting the allegations of the complaint, fixing the actual value of the baggage at $615, and stating that the defendant's only defense would be the application of the tariff limiting liability to $25. The court rendered judgment for the named plaintiff to recover the sum of $615 and her costs. The defendant has appealed.

The following facts were found by the trial court: On October 5, 1949, the named plaintiff, hereinafter called the plaintiff, purchased a ticket for passage upon trains operated by the defendant, a corporation engaged in interstate commerce and passenger transit for hire, from Meriden to New Haven, in Connecticut, and to Fall River, in Massachusetts. She boarded the train at Meriden and arrived at the defendant's station in New Haven shortly after 11:30 a. m. She got off the train and was approached by a redcap employed by the defendant, who solicited her baggage. She surrendered it to him with orders to return it to her at the train leaving for Fall River at 12:40 p. m. The redcap did not return her baggage. It was lost by reason of the negligence of the defendant and its agents. It was worth $615. The defendant had on file with the interstate commerce commission a tariff entitled "New England Joint Tariff RC No. 3-N," which limited its liability with respect to the handling of hand baggage by redcaps to $25 unless a greater value was declared in writing by the passenger. The plaintiff did not make any written declaration of a greater value. There was no evidence offered that she paid or intended to pay anything of value for the handling of the baggage. The redcap did not issue any ticket or check. There were no signs posted at any point calling the attention of passengers to the fact that the defendant's liability was limited by any tariff schedule. The plaintiff had no knowledge of any tariff limiting liability. From these subordinate facts, the court concluded that the baggage was left with the defendant for safekeeping and

not for transportation in interstate commerce, and that the defendant's liability was determined by the laws of Connecticut concerning bailment. The appeal tests the correctness of this conclusion.

If the baggage, while in the possession of the defendant, was in interstate commerce, the limitation of liability set forth in the tariff filed with the interstate commerce commission is applicable and controls the decision of the court even though the plaintiff had no actual knowledge of the tariff. *Boston & M. R. R. v. Hooker*, 233 U. S. 97, 110, 34 S. Ct. 526, 58 L. Ed. 868; *Nashville, C. & St. L. Ry.* v. *Ham*, 78 Ga. App. 403, 414, 50 S.E.2d 831; 24 Stat. 380 (§ 6), as amended, 49 U.S.C. § 6(1). The term "interstate commerce" is not a technical legal conception but a practical one. *Foster-Fountain Packing Co.* v. *Haydel*, 278 U.S. 1, 10, 49 S. Ct. 1, 73 L. Ed. 147; 11 Am. Jur. 9, § 4, 29, § 28; see *McLeod* v. *Threlkeld*, 319 U.S. 481, 495, 63 S. Ct. 1248, 87 L. Ed. 1538. The fact that the defendant was a common carrier engaged generally in interstate commerce is not conclusive. The question is whether the particular transaction involved was in interstate commerce or so directly and immediately connected with it as to be a part of it or a necessary incident to it. *Sullivan* v. *New York, N.H. & H. R. Co.*, 105 Conn. 122, 127, 134 A. 795; *Moran* v. *New York, N.H. & H. R. Co.*, 109 Conn. 94, 98, 145 A. 567. The determination of its character is largely a matter of fact. *Southern Pac. Co.* v. *Arizona*, 249 U. S. 472, 477, 39 S. Ct. 313, 63 L. Ed. 713; *Railroad Commission* v. *Worthington*, 225 U. S. 101, 108, 32 S. Ct. 653, 56 L. Ed. 1004.

The defendant claims that the plaintiff was engaged in an interstate trip because she had purchased a ticket from Meriden, in Connecticut, to Fall River, in Massachusetts, and that the handling of her baggage by the redcap was incidental to that trip and in furtherance of it. The terms of a ticket or a bill of lading are merely evidential. They are not conclusive as to the nature of a journey or a shipment. "The law looks at the substance of the thing done." *Boston & M. R. R. v. Cate*, 254 Mass. 248, 250, 150 N. E. 210; *Service* v. *Sumpter Valley Ry. Co.*, 88 Ore. 554, 576, 171 P. 202; *Pitman* v. *Yazoo & M. V. R. Co.*, 171 Miss. 799, 810, 158 So. 547; *Minnesota* v. *Blasius*, 290 U. S. 1, 10, 54 S. Ct. 34, 78 L. Ed. 131. The finding describes the proposed jour-

[fol. 16] ney from Meriden to Fall River as not being continuous. It was suspended for a substantial time in New Haven. It was to be resumed only when the plaintiff started to board the train which would take her from New Haven to Fall River. Her journey, so far as it appears from the facts before us, was intrastate. See *New York Cent. R. Co.* v. *Mohney*, 252 U. S. 152, 157, 40 S. Ct. 287, 64 L. Ed. 502. In this very important aspect, the case at bar is distinguishable from these cases, relied upon by the defendant: *Birmingham Term. Co.* v. *Wilson*, 249 Ala. 397, 31 So. 2d, 563; *Franklin* v. *Southern Pac. Co.*, 203 Cal. 680, 265 P. 936, cert. denied, 278 U. S. 621, 49 S. Ct. 24, 73 L. Ed. 542; *Tilson* v. *Terminal R. Assn.*, 236 S.W.2d 42 (St. Louis Ct. App.) It was conceded in the *Birmingham Terminal* case (p. 399) that the plaintiff was an interstate passenger. In the *Franklin* case (p. 682) the redcap was to deliver the baggage of the plaintiff to her after she had embarked upon the train that was to carry her to Alabama. The transfer of the plaintiff in the *Tilson* case (p. 44) was much more direct than that of the plaintiff in the present case.

The trial court's conclusion that the plaintiff left her bag with the defendant's agent for safekeeping and not for transportation was a conclusion drawn from subordinate facts. Maltbie, Conn. App. Proc., p. 128. It is reasonably and logically supported by them and is not in violation of any rule or principle of law. Id. § 4, p. 7, § 96, p. 129; *Leigh* v. *Smith*, 138 Conn. 494, 496, 86 A.2d 567. It renders the defendant liable as an ordinary bailee for the actual value of the property lost. *Allen* v. *Southern Pac. Co.*, 213 P.2d 667 (Utah); *Wells* v. *Active Automobile Exchange, Inc.*, 99 Conn. 523, 527, 121 A. 883; *Murray* v. *Paramount Petroleum & Products Co.*, 101 Conn. 238, 242, 125 A. 617.

There is no error.

In this opinion Jennings and Inglis, Js., concurred.

Brown, C.J. (dissenting).

As appears by the majority opinion, the question decisive of this appeal is whether the court's conclusion that the plaintiffs' baggage "was left with the Defendant for safekeeping and not for transportation and, therefore, was not in Interstate Commerce" is supported by the subordinate facts found. I conclude that it is not and that therefore

there was error in the judgment as rendered for the named plaintiff.

These are the only material facts. The defendant was engaged in interstate commerce in the carriage of passengers for hire. The named plaintiff purchased a ticket for passage upon its trains from Meriden, by way of New Haven, both in Connecticut, to Fall River, in Massachusetts. With suitcase in hand, she boarded the defendant's train at Meriden at 11:19 a. m. and arrived at New Haven shortly after 11:30 a. m. Upon alighting there on the station platform, she surrendered her suitcase to one of the defendant's redcaps, with orders that he return it to her "at the train leaving for Fall River on Track No. 8 at 12:40 P. M." He failed to return it to her "at that time or at any other time."

In my opinion, the only reasonable conclusion which the court could reach upon these facts was that the plaintiff continued as a passenger of the defendant in interstate commerce during all of the interval between her arrival at the New Haven station and the departure therefrom of the connecting train for Fall River, and that the loss of her suitcase was incident to her status as such a passenger. *Franklin* v. *Southern Pac. Co.*, 203 Cal. 680, 265 P. 936, cert. denied, 278 U. S. 621, 49 S. Ct. 24, 73 L. Ed. 542; *Tilson* v. *Terminal R. Assn.*, 236 S. W. 2d 42, 45 (St. Louis Ct. App.); *Stopher* v. *Cincinnati Union Term. Co.*, 246 I.C.C. 41, 45; *Dayton Union Ry. Co. Tariff for Redcap Service*, 256 I.C.C. 289; *Williams* v. *Jacksonville Term. Co.*, 315 U. S. 386, 62 S. Ct. 659, 86 L. Ed. 914, 925. Accordingly, I conclude that the determination by the majority that "[h]er journey, so far as it appears from the facts before us, was intrastate" is unwarranted. It necessarily follows that the defendant's interstate tariff limits the plaintiff's right of recovery to $25. This means that there was error and that the case should be remanded to the City Court of Meriden with direction to enter judgment pursuant to § 7944 of the General Statutes, predicated upon the offer of judgment made by the defendant.

In this opinion Roberts, Jr., concurred.

[fol. 17] STATE OF CONNECTICUT

At A Supreme Court of Errors held at Hartford on the first Tuesday of October, A. D. 1952.

Present, Hon. Allyn L. Brown, Chief Justice, Hon. Newell Jennings, Hon. Raymond E. Baldwin, Hon. Ernest A. Inglis, Hon. J. Howard Roberts, Associate Judges.

MRS. GEORGE NOTHNAGLE of the City of Meriden, County of New Haven, State of Connecticut,

vs.

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, a Corporation.

On Appeal from the City Court of Meriden in New Haven County.

JUDGMENT.

This appeal by the defendant claiming error in the process, record and judgment, and in the proceedings and decisions of the Court on questions of law arising in the trial, as may appear in the certified transcript of record and finding of facts, on file in this Court, was allowed by the City Court of Meriden in New Haven County on the 13 day of January, A. D. 1951, and came to this Court, at its term held at Hartford, on the first Tuesday in April, A. D. 1951, and thence by continuance to the present term, when the parties appeared and were fully heard.

And now this Court finds that in the record, judgment and proceedings of said City Court of Meriden in New Haven County there is no error.

It is therefore considered and adjudged that said judgment be confirmed and established, and that the appellee recover of the appellant her costs taxed at $ — —.

Date of judgment, November 25, 1952.

By the Court, — —, *Clerk.*

[fol. 18] [Endorsed:] #3675. The Supreme Court of Errors. Third Judicial District, Mrs. George Nothnagle vs. New York, New Haven & Hartford Railroad Company. Judgment File. Date of Judgment, November 25, 1952.

[fol. 19] STATE OF CONNECTICUT, NEW HAVEN COUNTY, SUPREME COURT OF ERRORS

I, Edward Horwitz, Clerk of the Supreme Court of Errors for New Haven County, in the State of Connecticut and keeper of the records and seal thereof, hereby certify that the within, above and foregoing is a true copy of the printed record used in the hearing before the Supreme Court of Errors of the State of Connecticut in the case of Mrs. George Nothnagle et al vs. The New York, New Haven and Hartford Railroad Company and of all the proceedings in said Supreme Court of Errors; including the rescript from said Supreme Court of Errors; the opinion of said Supreme Court of Errors; and the judgment therein; and I further certify that no further proceedings of any kind other than as noted herein have been filed in said Supreme Court of Errors in the above entitled action.

In witness whereof I hereunto set my hand and affix the seal of said Court at New Haven, in said County, this 17th day of December, A. D. 1952.

Edward Horwitz, *Clerk*.

[fol. 20] SUPREME COURT OF THE UNITED STATES, OCTOBER TERM, 1952

No. 525

THE NEW YORK, NEW HAVEN AND HARTFORD RAILROAD COMPANY, Petitioner,

vs.

MRS. GEORGE NOTHNAGLE et al.

ORDER ALLOWING CERTIORARI—Filed March 9, 1953

The petition herein for a writ of certiorari to the Supreme Court of Errors of the State of Connecticut is granted and the case is transferred to the summary docket.

And it is further ordered that the duly certified copy of the transcript of the proceedings below which accompanied the petition shall be treated as though filed in response to such writ.